

**STATE OF WASHINGTON  
DEPARTMENT OF EARLY LEARNING  
REQUEST FOR QUALIFICATIONS AND QUOTATIONS  
#08-RFQQ-0115**

*If you download this RFQQ from the Department of Early Learning website located at: [www.del.wa.gov](http://www.del.wa.gov) you are responsible for sending your name, address, e-mail address and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ amendments or bidder questions/answers.*

**PROJECT TITLE:** Child Care Consultation Pilot Evaluation

**PROPOSAL DUE DATE:** July 25, 2008

**EXPECTED TIME PERIOD FOR CONTRACT:** August 25, 2008 – June 30, 2009

**CONSULTANT ELIGIBILITY:** This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

**CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS:**

1. Introduction
2. General Information for Consultants
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  - A. Certifications and Assurances
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## **1 INTRODUCTION**

### **1.1 PURPOSE AND BACKGROUND**

The purpose of this RFQQ is to obtain the professional services of experts who can assist the Department of Early Learning (DEL) in evaluating the child care consultation pilot projects currently underway.

In state fiscal year 2008-2009, the Washington state legislature appropriated funding to the DEL for the purpose of piloting approaches to child care consultation that would optimize young children's social-emotional development.

They were especially interested in funding pilot child care consultations that would link child care providers with evidence-based and promising practice resources regarding infants and young children who present behavior concerns.

### **1.2 OBJECTIVE**

The objective of this RFQQ is to obtain the services of experts who can design and assist pilot projects in implementation of an evaluation for the child care consultation project. The following activities will be required to meet this objective:

- Meet with each of the three pilot projects to gain an understanding of their approach to pilot;
- In coordination with DEL and pilot project agencies, design an evaluation that connects with individual agency approaches and captures common evaluative elements across approaches;
- Assist individual pilot project agencies with identification of required data elements and implementation of subsequent data collection;
- Design and carry out an approach to data analysis that leads to common and pilot project agency-specific outcomes;
- Provide evaluation deliverables that include evaluation process and outcome data

### **1.3 MINIMUM QUALIFICATIONS**

The Consultant must be licensed to do business in the state of Washington. In addition, the consultant must have experience in: serving as part of a national technical assistance center focusing on children's behavioral health; evaluation of evidence-based practice in behavioral health focused on young children, birth through age five and their families; and expertise in technical assistance to child care and other early learning providers in promoting social, emotional and behavioral well-being of children in their care.

Bidders, who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

### **1.4 FUNDING**

The overall budget for this project shall not exceed \$38,000. Proposals in excess of \$38,000 will be rejected as non-responsive and will not be evaluated. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

Any contract(s) awarded as a result of this procurement is contingent upon the availability of funding.

### **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about August 25, 2008 and to end on June 30, 2009.

### **1.6 DEFINITIONS**

Definitions for the purposes of this RFQQ include:

**Agency.** The Department of Early Learning is the agency of the state of Washington that is issuing this RFQQ.

**Consultant.** Individual, company, or firm submitting a proposal in order to attain a contract with the AGENCY.

**Contractor.** Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

**Proposal.** A formal offer submitted in response to this solicitation.

**Request for Qualifications and Quotations (RFQQ).** Formal procurement document in which services needed are identified and consultants are invited to provide their qualifications to provide the services and their hourly rates.

### **1.7 ADA**

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

## 2 GENERAL INFORMATION FOR CONSULTANTS

### 2.1 RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name	Sheri Bruu-DeLeon
Mailing Address	P.O. Box 40970 Olympia, WA 98504-0970
Street Address	OR 649 Woodland Square Loop SE Lacey, WA 98503
Phone Number	360-725-4675
Fax Number	360-413-3482
E-Mail Address	<a href="mailto:Sheri.Bruu-Deleon@del.wa.gov">Sheri.Bruu-Deleon@del.wa.gov</a>

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	July 10, 2008
Question & answer period	July 10, 2008-July 16, 2008
Issue addendum to RFQQ (if applicable)	July 17, 2008
Proposals due	July 25, 2008
Evaluate proposals	July 28 & 29, 2008
Conduct oral interviews with finalists, if required	July 30, 2008
Announce "Apparent Successful Contractor"	July 31, 2008
Hold debriefing conferences (if requested)	August 5, 2008
Negotiate contract	August 4-8, 2008
File contract with OFM	August 11, 2008
Begin contract work	August 25, 2008

The AGENCY reserves the right to revise the above schedule.

## **SUBMISSION OF PROPOSALS**

The proposal must be **received by the RFQQ Coordinator** no later than Friday July 25, 2008, 3:00pm, local time in Olympia, Washington.

Proposals must be submitted electronically as an attachment to an e-mail to the RFQQ Coordinator at the e-mail address listed in Section 2.1. Attachments to e-mail shall be on Microsoft Word format or PDF. Zipped files cannot be received by the AGENCY and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. The AGENCY does not assume responsibility for problems with Consultant's e-mail. If the AGENCY'S email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFQQ Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration, unless the AGENCY'S e-mail is found to be at fault. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

### **2.3 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to .340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to .340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

## **2.4 REVISIONS TO THE RFQQ**

In the event it becomes necessary to revise any part of this RFQQ, addenda will be provided to all who receive the RFQQ.

The AGENCY also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

## **2.5 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by consultants certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov> to obtain information on certified consultants.

## **2.6 ACCEPTANCE PERIOD**

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

## **2.7 RESPONSIVENESS**

All proposals will be reviewed by the RFQQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQQ. The Consultant is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

## **2.8 MOST FAVORABLE TERMS**

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Consultants proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

## **2.9 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as

allowed in the Certifications and Assurances section, Exhibit A to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

#### **2.10 COSTS TO PROPOSE**

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFQQ, in conduct of a presentation, or any other activities related to responding to this RFQQ.

#### **2.11 NO OBLIGATION TO CONTRACT**

This RFQQ does not obligate the state of Washington or the AGENCY to contract for services specified herein.

#### **2.12 REJECTION OF PROPOSALS**

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

#### **2.13 COMMITMENT OF FUNDS**

The director of the AGENCY or the director's delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

#### **2.14 ELECTRONIC PAYMENT**

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

#### **2.15 INSURANCE COVERAGE**

The Contractor is to furnish the AGENCY with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at Contractor's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the AGENCY within fifteen (15) days of the contract effective date.

#### **Liability Insurance**

*Commercial General Liability Insurance (CGL):* Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an



insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

*Business Auto Policy:* As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

### **Employers Liability ("Stop Gap") Insurance**

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Additional Provisions**

Above insurance policy shall include the following provisions:

- **Additional Insured.** The AGENCY, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** The AGENCY shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the state's contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the AGENCY, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

### **Workers' Compensation Coverage**

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### **3 PROPOSAL CONTENTS**

#### ***For electronic proposals:***

Proposals must be written in English and submitted electronically in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Qualifications
3. Quotation

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive, however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **3.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Attach the Certifications and Assurances form to the Letter of Submittal.

#### **3.2 QUALIFICATIONS SECTION**

The services to be provided under this project are:

- Meeting with each of the three pilot projects to gain an understanding of their approach to the pilot;
- Designing an evaluation that connects with individual agency approaches and captures common evaluative elements across approaches, in coordination with DEL and pilot project agencies;
- Assisting individual pilot project agencies with identification of required data elements and implementation of subsequent data collection;
- Designing and carry out approach to data analysis that leads to common and pilot project agency-specific outcomes;
- Providing evaluation deliverables that include evaluation process and outcome data

The Qualifications Section of the proposal must contain information that will demonstrate to the evaluation committee the Consultant's understanding of the types of services proposed, the consultant's ability to accomplish them, and the ability to meet tight timeframes.

The Qualifications Response is to be submitted in three sections as follows: 1) Business Information, 2) Experience and Staffing, and 3) Schedule. The optional fourth section would include proof of certification for minority and women-owned businesses participating on the project.

### **3.2.1 BUSINESS INFORMATION (MANDATORY)**

- A. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. Provide the consultant's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
- C. Indicate how many employees are with the consultant. Name the consultant principles and their roles.
- D. Identify any state employees or former state employees employed by the Consultant or on the Consultant's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
- E. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date.
- F. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- G. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

### **3.2.2 QUALIFICATIONS**

#### **1. EXPERIENCE (SCORED)**

- A. Describe services provided by the Consultant that indicate the consultant's ability to provide the services described in this RFQQ.
- B. Describe the consultant's recent experience with serving as part of a national technical assistance center focusing on children's behavioral health; evaluation of evidence-based practice in behavioral health focused on young children, birth through age five and their families; and expertise in technical assistance to child care and other early learning providers in promoting social, emotional and behavioral well-being of children in their care.

## **2. STAFFING (SCORED)**

- A. Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- B. Provide the name and a resume' of the person who will be the lead contact for the project. Provide names and resumes' for other staff, which includes information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information.
- C. List any sub-consultants you may want to include to complete your roster of services. Describe what services each would provide. Provide the information in Section 3.2.1 about each.

## **3. SCHEDULE (SCORED)**

Describe the consultant's ability to meet deadlines, especially on a short-time frame, and give examples of how past tight deadlines have been successfully met.

## **4. REFERENCES (MANDATORY)**

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided for them. The Consultant must grant permission to the AGENCY to contact the references and others who may have pertinent information. Do not include current AGENCY staff as references. The AGENCY may evaluate references at the AGENCY's discretion.

## **5. OMWBE CERTIFICATION (OPTIONAL AND NOT SCORED)**

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned consultant and/or women-owned consultant(s) will be participating on this project.

### **3.3 QUOTATIONS SECTION**

#### **3.3.1 IDENTIFICATION OF COSTS (SCORED)**

The Quotations section must list all hourly rates in U.S. dollars for services anticipated under the proposed contract. The hourly rates are to represent fully weighted costs. This includes the hourly rates of staff that would be assigned to the project, administrative costs, local travel costs, or any other applicable fees that would be charged under this contract.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Washington State Office of Minority and Women's Business Enterprises.

Consultants are required to collect and pay Washington State taxes as applicable.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFQQ. Consultants are encouraged, however, to submit proposals which are consistent with state government efforts to conserve state resources.

### **3.3.2 COMPUTATION**

The score for the cost proposal will be computed by dividing the lowest average hourly rate received by the Consultant's average hourly rate. Then the resultant number will be multiplied by the maximum possible points for the cost section.

## **4 EVALUATION AND CONTRACT AWARD**

### **4.1 EVALUATION PROCEDURE**

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team to be designated by the AGENCY, which will determine the ranking of the proposals.

AGENCY, at its sole discretion, may also elect to select the top-scoring consultants as finalists for an oral presentation.

### **4.2 CLARIFICATION OF PROPOSAL**

The RFQQ Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

### **4.3 EVALUATION WEIGHTING AND SCORING**

The following weighting and points will be assigned to the proposal for evaluation purposes:

Qualifications Section – 75%	75 points
Consultant Experience.....45 points (maximum)	
Staff Qualifications.....20 points (maximum)	
Schedule.....10 points (maximum)	
Quotation Section – 25%	<u>25 points</u>
<b>Grand Total</b>	<b><u>100 Points</u></b>

### **4.4 ORAL PRESENTATIONS MAY BE REQUIRED**

Oral presentations, if considered necessary by the AGENCY, may be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top-scoring consultant(s) from the written evaluation for an oral presentation and contact the top-scoring consultant(s) to schedule a date, time and location for an oral presentation. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

The oral presentation shall determine the Apparently Successful Contractor.

OR

The score from the oral presentation will be added to the written score to determine the Apparently Successful Contractor.

#### **4.5 NOTIFICATION TO PROPOSERS**

Consultants whose proposals have not been selected for further negotiation or award will be notified by FAX or by e-mail.

#### **4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### **4.7 PROTEST PROCEDURE**

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFQQ Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document or AGENCY policy

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as:

- 1) An evaluator's professional judgment on the quality of a proposal, or,
- 2) AGENCY'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the director who was not involved in the procurement, will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action.
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest.
- Find merit in the protest and provide the AGENCY options which may include:
  - Correct the errors and re-evaluate all proposals
  - Reissue the solicitation document and begin a new process
  - Make other findings and determine other courses of action as appropriate

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

#### **RFQQ EXHIBITS**

- Exhibit A Certifications and Assurances
- Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

**EXHIBIT A**  
**CERTIFICATIONS AND ASSURANCES**

1. I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):
2. I/we declare that all answers and statements made in the proposal are true and correct.
3. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
4. The attached proposal is a consultant offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
5. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
6. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
7. Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
8. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
9. No attempt has been made or will be made by the Proposer to induce any other person or consultant to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we grant the AGENCY the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

**On behalf of the Consultant submitting this proposal, my name below attests to the accuracy of the above statements.**

**If electronic, also include:** We are submitting a scanned signature of this form with our electronic proposal.

---

Signature of Proposer

---

Title

---

Date



**EXHIBIT B  
SAMPLE CONTRACT**

<b>DEPARTMENT OF EARLY LEARNING</b>		<b>CLIENT SERVICE CONTRACT</b>		<b>DEL Contract Number:</b>
<b>This Contract is between the state of Washington Department of Early Learning (DEL) and the CONTRACTOR identified below.</b>				
<b>CONTRACTOR INFORMATION</b>				
<b>NAME</b>			<b>Doing business as (DBA)</b>	
<b>ADDRESS</b>			<b>WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)</b>	
<b>CONTACT</b>	<b>TELEPHONE</b>	<b>FAX</b>	<b>E-MAIL ADDRESS</b>	
<b>DEL INFORMATION</b>				
<b>CONTACT NAME AND TITLE</b>		<b>CONTACT ADDRESS</b>		
<b>TELEPHONE</b>	<b>FAX</b>	<b>E-MAIL ADDRESS</b>		
<b>IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?</b> <input type="checkbox"/> No <input type="checkbox"/> YES		<b>If A SUBRECIPIENT - CFDA NUMBER(S)</b>		
<b>CONTRACT STATE FUNDS</b>	<b>CONTRACT FEDERAL FUNDS</b>	<b>CONTRACT MAXIMUM AMOUNT \$</b>		
<b>CONTRACT START DATE</b>		<b>CONTRACT END DATE</b>		
<b>CONTRACT PURPOSE: The purpose of this contract is to provide</b>				
The following Exhibits are attached and are incorporated to this Contract by this reference: <b>Exhibit A Statement Of Work and Exhibit B General Terms And Conditions</b>				
<b>The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DEL only upon signature by DEL.</b>				
<b>CONTRACTOR SIGNATURE</b>		<b>PRINTED NAME AND TITLE</b>	<b>DATE SIGNED</b>	
<b>DEL SIGNATURE</b>		<b>PRINTED NAME AND TITLE</b>	<b>DATE SIGNED</b>	

## COMPENSATION/ PAYMENT

DEL shall pay an amount not to exceed [REDACTED] (\$ [REDACTED]) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

### **NOTES:**

- 1) *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. or reference documents that specify CONTRACTOR's compensation and payment, e.g., CONTRACTOR's compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses.*
- 2) *Identify federal and state dollar amounts when relevant reporting requirements apply.*

## EXPENSES

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by DEL as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$ [REDACTED], which amount is included in the Contract total above Paragraph A, "Amount of Compensation". Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

## BILLING PROCEDURES

**NOTE:** *Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc.*

DEL will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Department of Early Learning, Attn: Fiscal Office, P.O. Box 40970, Olympia, WA 98504-0970 not more often than monthly. The invoices shall describe and document, to DEL'S satisfaction, the work performed, the progress of the project, and fees.

**NOTE:** *Add this language if expenses are allowed. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expense exceeding \$50.00 in order to receive reimbursement.*

Payment shall be considered timely if made by DEL within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

DEL may, in its sole discretion, terminate the Contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by DEL.

DEL shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

**DUPLICATION OF BILLED COSTS:** The CONTRACTOR shall not bill DEL for services performed under this contract, and DEL shall not pay the CONTRACTOR, if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**DISALLOWED COSTS:** The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**NOTE:** *Optional Provision - DEL shall withhold ten percent (10%) from each payment until acceptance by DEL of the final report (or completion of the project, etc.)*

*Optional Provision - The CONTRACTOR warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.*

## **INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor or agents of either, while performing under the terms of this contract.

The insurance required shall be issued by an insurance company(s) authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees, as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEL 30-days advance notice of any insurance cancellation.

CONTRACTOR shall submit to DEL within 15-days of the Contract effective date, a certificate of insurance, which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this contract, as follows:

### **Commercial General Liability Insurance Policy**

Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

### **Automobile Liability**

In the event that services delivered pursuant to this Contract involve the use of vehicles, owned or operated by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

**\$1,000,000 per occurrence, using a Combined  
Single Limit for bodily injury and property  
damage.**

#### Professional Liability, Errors and Omissions Insurance

The CONTRACTOR shall maintain Professional Liability or Errors and Omissions Insurance. The CONTRACTOR shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all program activities by the CONTRACTOR and licensed staff employed or under contract to the CONTRACTOR. The state of Washington, its agents and employees need *not* be named as additional insureds under this policy.

The required insurance shall be issued by an insurance company(s) authorized to do business within the state of Washington, and except for Professional Liability or Errors and Omissions Insurance, shall name the state of Washington, its agents and employees as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give DEL 30-days advance notice of any insurance cancellation.

#### ASSURANCES

DEL and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

#### **ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic Contract instrument;
- Exhibit B – General Terms and Conditions;
- Exhibit C – Contractor's Proposal;
- Exhibit C – Procurement No. 08-RFQQ-0115; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

#### ENTIRE AGREEMENT

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

#### CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **APPROVAL**

This Contract shall be subject to the written approval of DEL'S authorized representative and shall not be binding until so approved. The Contract may be altered, amended or waived only by a written amendment executed by both parties.

## **EXHIBIT A**

### **GENERAL TERMS AND CONDITIONS**

**DEFINITIONS** - As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) "CLIENT" shall mean an individual receiving services under this contract.
- (b) "COGNIZANT STATE AGENCY" shall mean the state agency from which the sub-recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency that contributes the largest portion of federal financial assistance to the sub-recipient.
- (c) "CONTRACTOR" shall mean that agency, firm, provider organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime CONTRACTOR as permitted under the terms of this agreement.
- (d) "CONTRACTING OFFICER" shall mean that individual authorized to execute this agreement on behalf of DEL.
- (e) "DEL" shall mean the Department of Early Learning of the state of Washington, any division, section, office, unit or other entity of DEL or any of the officers or other officials lawfully representing that DEL.
- (f) "PERSONAL INFORMATION" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- (g) "SUBCONTRACTOR" shall mean one not an employee of the contractor, who is performing all or part of those services under this Contract under a separate contract with the contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- (h) "SUBRECIPIENT" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- (i) A "VENDOR" is an entity that agrees to provide the amount and kind of services requested by DEL; provides services under the Contract only to those beneficiaries individually

determined to be eligible by DEL and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

Americans with Disabilities Act (ADA) Of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR PART 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **Assignment**

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of DEL.

### **Certification Regarding Debarment, Suspension and Ineligibility**

If federal funds are the basis for this contract, the CONTRACTOR certifies that neither it nor its principals are presently debarred, declared ineligible or voluntarily excluded from participation in transactions by any federal department or agency.

### **Change in Status**

In the event of substantive change in the legal status organizational structure or fiscal reporting responsibility of the CONTRACTOR, CONTRACTOR agrees to notify DEL of the change. CONTRACTOR shall provide notice as soon as practicable, but no later than thirty-days after such a change takes effect.

### **Changes and Modifications**

The contracting officer may, at any time, by written notification to the contractor, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the contract. If the CONTRACTOR agrees to such changes, a written contract amendment reflecting such change shall be executed by the parties. An equitable adjustment in cost or period of performance or both may be made if required by the change. Any claim for adjustment in price or period of performance must be received within thirty (30) days of the contractor's receipt of the change notice.

The contracting officer may, however, receive and act upon any such claim at any time prior to final payment under the Contract at his/her discretion.

Failure to agree to any adjustment made under this section shall be an issue and may be reviewed as provided in the "Disputes" section of this agreement. Nothing in this section shall excuse the CONTRACTOR from proceeding with the Contract as changed.

### **Conflict of Interest**

DEL may, in its sole discretion, by written notice to the contractor, terminate this Contract if it finds, after due notice and examination by the contracting Officer, that there is a violation of the

Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of or performance under, this contract.

In the event this Contract is terminated as provided above, DEL shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the Contract by the contractor. The rights and remedies of DEL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the contracting officer makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

### **Covenant Against Contingent Fees**

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees or bonafide established agent maintained by the CONTRACTOR for the purpose of securing business. DEL shall have the right, in the event of breach of this clause by the contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

### **Disputes**

#### **Option 1 - Dispute Resolution Board**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, any party may request a dispute resolution board (DRB). A request for a DRB must be in writing, state the disputed issue(s), state the relative positions of the parties and be sent to all parties. Parties must provide a response within 30 days. Once a party requests a DRB, each party shall designate a representative. The representatives shall mutually select a third member (or an additional member for disputes involving more than two parties).

The DRB shall evaluate the facts, Contract terms and applicable statutes and rules and make a determination by majority vote. The decision is binding on all parties.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

#### **Option 2 - Dispute Hearing**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of Agency or his or her designee.

##### **1. The request for a dispute hearing must:**

- Be in writing;
- State the disputed issues;
- State the relative positions of the parties;
- State the contractor's name, address, and Contract number; and
- Be mailed to the agent and the other party's (respondent's) Contract manager within three working days after the parties agree that they cannot resolve the dispute.

2. The respondent shall send a written answer to the requestor's statement to both the agent and the requestor within five working days.
3. The agent shall review the written statements and reply in writing to both parties within ten working days. The agent may extend this period if necessary by notifying the parties.
4. The decision shall be admissible in any succeeding judicial or quasi-judicial proceeding.
5. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

### **Option 3 - Mediation**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a dispute resolution board or arbitration.

### **Disallowed Costs**

The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

### **Governing Law**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

### **Option 1 - Intermediate Version**

#### **Indemnification**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractors' obligations to indemnify, defend, and hold harmless includes any claim by contractors' agents, employees, representatives or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the state, shall not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.



### *Option 2 - Limited Version*

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless the state, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractors' obligations to indemnify, defend, and hold harmless includes any claim by contractors' agents, employees, representatives or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the contract. CONTRACTOR shall be required to indemnify, defend, and hold harmless the state, only to the extent claim is caused in whole or in part by negligent acts or omissions of contractor.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

### **Option 3 - Mutual Version**

Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.

*NOTE: The Office of Financial Management, Risk Management Division, has been responsible for developing recommendations on risk management. They generally recommend using the intermediate language in most contracts. The limited language is more often used in public works contracts. However, it may also be used at a contractor's insistence, after the agency has evaluated its risks and determined if a limited indemnification and hold harmless clause is acceptable. The alternate indemnity clause makes each party responsible for its own actions.*

### **Independent Capacity**

The parties intend that an independent CONTRACTOR relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this Contract are not employees or agents of DEL. The CONTRACTOR will not hold himself/herself out as nor claim to be an officer or employee of DEL or of the state of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the contractor.

### **Industrial Insurance Coverage**

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DEL may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. DEL may:

- Deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by department under this contract; and

- Transmit the deducted amount to DEL of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's rights to collect from the contractor.

### **Licensing and Accreditation Standards**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary in the performance of this contract.

### **Limitation of Authority**

Only the contracting officer or his/her delegate by writing (delegation to be made prior to action) shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the contracting officer.

### **Nondiscrimination**

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with DEL. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

### **Overpayments and Assertion of Lien**

In the event that DEL establishes overpayments or erroneous payments made to the CONTRACTOR under this contract, DEL may secure repayment, plus interest, if any, through the filing of a lien against the contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to DEL or by doing both.

### **Privacy**

Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this contract. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. CONTRACTOR agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

DEL reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the CONTRACTOR through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by DEL. CONTRACTOR shall

certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless DEL for any damages related to the contractor's unauthorized use of personal information.

For the purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

### **Records, Documents, and Reports**

The CONTRACTOR shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by DEL, personnel duly authorized by the Department, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

### **Registration with Department of Revenue**

The CONTRACTOR shall complete registration with the Department of Revenue, General Administration Building, Olympia WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

### **Right of Inspection**

The CONTRACTOR shall provide right of access to its facilities to DEL or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of DEL. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the contractor's business or work hereunder.

### **Rights in Data**

Unless otherwise provided, data that originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by DEL. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys,

studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data that is delivered under the contract, but that does not originate there from, shall be transferred to DEL with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent that the CONTRACTOR has a right to grant such a license.

The CONTRACTOR shall exert all reasonable effort to advise DEL, at the time of delivery of data furnished under this agreement, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this agreement.

DEL shall receive prompt written notice of each notice or claim or copyright infringement received by the CONTRACTOR with respect to any data delivered under this agreement. DEL shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

### **Safeguarding of Information**

The CONTRACTOR shall not use or disclose any:

- Personal Information gained by reason of this Contract or:
- Information that may be classified as confidential for any purpose not directly connected with the administration of this Contract except (1) with prior written consent of DEL or (2) as may be required by law. The CONTRACTOR shall safeguard such information and shall return or certify destruction of the information upon Contract expiration or termination.

### **Savings**

In the event funding from state, federal or other sources is withdrawn, reduced or limited in any way after the effective date of this Contract and prior to normal completion, DEL may terminate the Contract under the "Termination for Convenience" clause, without advance notice, subject to renegotiation at DEL's discretion under those new funding limitations and conditions.

### **Severability**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this contract, and to this end the provisions of this Contract are declared to be severable.

### **Single Audit Act Requirements**

If the CONTRACTOR is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the CONTRACTOR shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers. The CONTRACTOR shall make the

contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DEL, and the Washington State Auditor's Office. The CONTRACTOR shall incorporate OMB Circular A-133 audit requirements into all contracts between the CONTRACTOR and its Subcontractors who are subrecipients. The CONTRACTOR shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the CONTRACTOR expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 31, 2003, the CONTRACTOR shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the CONTRACTOR shall submit to the contracting officer named in this Contract the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable).